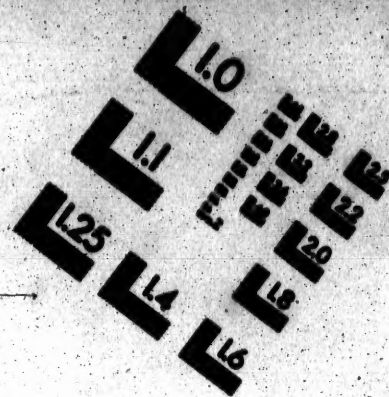
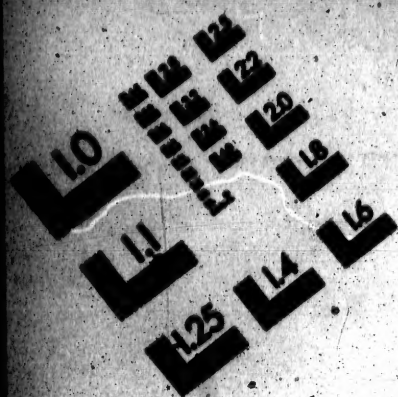




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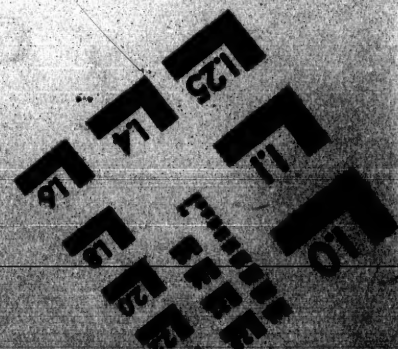
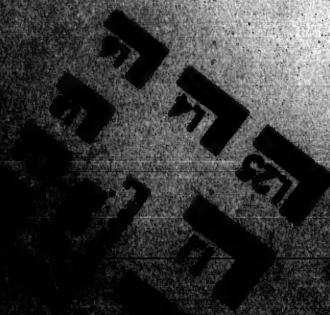
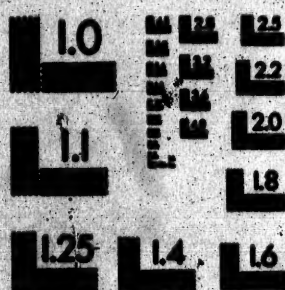
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COMMON PLEAS.

*assizes, 1865, at London, Canada West, before the
Hon. John Wilson, J.*

THOS. McDONOUGH & CHAS. W. KENT

THE ROYAL INSURANCE COMPANY.

FULL REPORT OF THE CASE.

MATTHEW C. CAMERON, Q. C.
THOMAS SCATCHARD,
WILLIAM R. MEREDITH,

Attorneys and Counsel for Plaintiffs.

HON JOHN H. CAMERON, Q. C.
THOMAS WELLS,
MESSRS. GALT & HENDERSON,

Counsel and Attorneys for Defendants.

LONDON, C. W. :

PRINTED AT THE "FREE PRESS" STEAM
PRINTING ESTABLISHMENT, NORTH-STREET.

1865.

COMMON PLEAS.

*Spring Assizes, 1865, at London, Canada West, before the
Hon. John Wilson, J.*

THOS. McDONOUGH & CHAS. W. KENT

versus

THE ROYAL INSURANCE COMPANY.

FULL REPORT OF THE CASE.

MATTHEW C. CAMERON, Q. C.
THOMAS SCATCHELD,
WILLIAM E. MEREDITH, } Attorneys and Counsel for Plaintiffs.

HON. JOHN H. CAMERON, Q. C.
THOMAS WELLS,
MESSRS. GALT & HENDERSON, } Counsel and Attorneys for Defendants.

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THE GREAT FIRE

AT

MESSRS. McDONOUGH & KENT'S ESTABLISHMENT.

A case which has for many months excited a good deal of interest, both in London and throughout the western part of Upper Canada, was brought before the adjourned sitting of the Middlesex Spring Assizes, the Hon. Mr. Justice John Wilson presiding, the case in question being the great trial between Messrs. McDonough & Kent, wholesale and retail Grocers and Dry Goods merchants, of Dundas Street, London, and the "Royal" Insurance Company. The action was for the recovery of \$8,000, being the amount of a Fire Insurance policy made by the Defendants in favour of the Plaintiffs. In order that the reader may be informed of the details of the case referred to, and thoroughly understand the cruel nature of the attempts made by the various Insurance Companies to blast the characters of Messrs. McDonough & Kent, and defraud them of the amounts due to them under certain policies of insurance granted to the Plaintiffs, it may be advisable to trace, in as brief space as possible, the history of the circumstances which led to the trial.

It should be first stated that Messrs. McDonough & Kent are well-known Grocery and Dry Goods merchants of London, and had carried on business in the principal street of that City for over ten years. The premises they occupied fronted on Dundas Street, and extended through the block to North Street. The store on Dundas Street comprised two frame buildings, made into one building by the displacement of the intervening partitions. To the rear of this wooden structure was a continuation of the shop, one story high, connecting with the brick building situated, as before stated, on North Street. Such were the premises, the old fashioned and a frame building, but well situated; the fame acquired by the firm in selling goods at small profits had so extended throughout the country, that crowds from all parts of the country flocked to all these old style of built shops. It may be here incidentally stated that so great was the extent of the business transactions of Messrs. McDonough & Kent, that during the twenty months preceding the fire their sales amounted to \$250,000, say \$487.00 per day. It should be mentioned that, adjoining their premises to the east was Mr. John Moule's grocery and provision store. This, too, was one of the "old standards," an old fashioned frame building of some thirty years' history. The two premises did not quite touch each other, a space of six or eight inches being left between them, widening up to the top—the interval being caused by a sinking of one of the stores referred to. It is necessary that this fact should be carefully borne in mind, as it is somewhat material in forming a correct judgment as to the locality of the fire which broke out. Such was the description of the premises of the firm, and their next door neighbour. The goods contained were valuable and extensive in amount. Groceries and dry goods were in large piles to the value of \$68,000; business was prosperous; customers poured in from all quarters, so fast, indeed, that the books of the firm were sadly behind, and everything bespoke that a continued career of prosperity would attend a business so long established, and so successfully prosecuted. But this was not to be; for on the early morn of Saturday, September 3rd, 1864, about 2 o'clock, a fire occurred, which destroyed their premises, and merchandise, to the value of over \$46,000, was almost instantaneously consumed by the devouring element.

It may readily be imagined that so great a conflagration caused an immense stir in so limited a place as London. During several years previously, alarming fires had taken place in the same city, especially the great conflagration of the Crystal Block, with nine or ten stores, the fire at Dr. Farrar's, Hope's, Warren's, Birrell's, Saunders', Talbot's, Spettigue's,

Fysh's, &c. A sort of terror had seized the citizens, and it was broadly affirmed that INCENDIARISM of a frightful character prevailed in the city. All efforts to discover the author or authors of these terrible fires were of no avail, and with a view to elicit the truth, the Coroner for the city, Dr. Moore, convened an inquest to inquire into, and if possible discover the origin of the disaster. Dr. Moore assembled a jury of nineteen of the most prominent and acute business men of the city. The following gentlemen comprised the jury:—

Messrs. J. H. Jackson, Jeweller; Thomas Webb, Merchant; W. Higginson, Merchant; Charles Friddie, Merchant; John Birrell, Wholesale Merchant; H. B. B. Alley, Merchant; Wm. Begg, Alderman; A. J. McDonald, Merchant; Wm. Simson, Merchant; John Beattie, Merchant; John Abraham, Merchant; Wm. S. Smith, Merchant; Robert Reid, Merchant; Thomas Wilson, Merchant; W. Y. Brunton, Auctioneer and Valuator; E. A. Mitchell, Druggist; H. Waterman, Merchant; Adam Hope, Wholesale Merchant, and W. Gordon. Mr. Begg was chosen Chairman.

The investigation which followed was of the most searching and painstaking character, extending over several days, and ending Friday evening the 9th September. Yet nothing was elicited tending to throw any light upon the origin of the fire. Possibly it might have been the work of an incendiary, whose object was plunder; certainly it could not have been caused by an accident from stoves, for no fire had been used on either McDonough & Kent's or Moule's premises for months, and the evidence sets forth that there was no likelihood that the conflagration had arisen from spontaneous combustion. But one valuable fact was elicited by the investigation, and that was that not a shade of suspicion could be raised against the character of the firm in question. The evidence adduced was so fair and straightforward, the explanations given by the principals and their assistants were of so clear and satisfactory a character that the breath of slander was at once suppressed. Not one of the jury who sat on the case, probably for a moment suspected that the fire was the act of anyone connected with the firm, and subsequent inquiry greatly strengthened that conviction in the public mind. Indeed, there was no motive that could be found for such an act on their part. The firm was wealthy, their stock heavy and well-assorted, their credit of the first class, and their business, large, increasing, and lucrative. They had nothing to gain by a fire, but, on the contrary everything to lose by a loss of business and property. When these facts became generally known, people ceased to look for any reason that might have induced the INCENDIARISM from WITHIN rather than from WITHOUT. But another view of the question completely destroys any motive that might be supposed to actuate an INCENDIARISM on their parts. Their stock at the time of the fire is proven by their books, and the evidence of their assistants, to have been at least \$48,000, while the insurance on the stock was but \$32,000—thus some \$30,000 of goods were entirely unprotected in case of a fire. As it was, but for the great exertions of the hundreds of people, who, with willing hands, removed many thousand dollars worth of goods from the burning premises, Messrs. McDonough & Kent must have been tremendous losers. Their loss was not covered by the existing policies by \$30,000, for their stock destroyed amounted to \$48,000. The hypothesis, then, that the fire was in any way caused or instigated by McDonough & Kent is utterly base, as the absence of MOTIVE alone precludes the possibility of such a charge holding the light of day for a single minute. It would be preposterous to suppose that a firm of the well-known wealth and commercial standing of Messrs. McDonough & Kent, and holding a stock of goods insured but for about 55 cents on the dollar, should cause the destruction of their own property; such an idea would be scouted by every intelligent man in the community.

After the inquest, which occupied several days, had been terminated, and Messrs. McDonough & Kent had time to review their position, their next step was naturally to look around and see what was necessary to be done, they found the conditions of the insurance policies, except the Provincial, required them to deliver an account of their loss, in detail, within fourteen days after the fire. The failure to deliver this statement on the part of the insured within fourteen days would have the effect of releasing the Companies from all liability. This most unfair and one sided condition, the American Companies doing business here never take advantage of, as it is apparent that whether an account is delivered in 14 or 20 days can in no way affect the merits of the account, but the Companies that had insured McDonough & Kent determined not to waive that condition of the insurance. On the other hand the insured never for a moment suspected that there would be any hesitation on the part of the Companies to settle their loss in a straightforward manner, and, least of all, that they would refuse them necessary time for the preparation of their claim. So after the fire, instead of turning their attention to the proof of their loss, they were engaged as witnesses and otherwise at the Coroner's Fire Inquest, called, no doubt, directly or indirectly at the instigation of the Insurance Companies to discover, if possible, the cause of the fire, or, as often happens, to find some plausible reason by which payment of an insurance may be evaded. For six days of the fourteen allowed for the preparation of the particulars of the loss, the attention of Messrs. McDonough & Kent was diverted to the fire inquest, the Insurance Agents giving no intimation that they would hold them strictly to time in the delivery of their claim.

The Fire Inquest terminated, it was expected that an investigation of the loss caused by the fire would be made by the Insurance Agents, but the Agents had no such intention—for on the 5th of September they called on the Insured, but instead of proposing an investigation of their books, raised objections as to the manner the books had been kept, urged the length of time that had elapsed since taking stock (twenty months), that the stock when last taken was not weighed, counted, nor measured, which was untrue, as the stock had been properly taken; that as to some of the items in the stock book they would even (not the least doubt of it) that the articles had been lumped, and without other explanation as to their intentions left the insured. During the interview, however, in reply to a question put by them to Mr. Smith, book keeper for the insured, as to the length of time that it would take to go over the books and make out a statement, they were told two or three months at least. Within an hour afterwards McDonough & Kent received a letter, signed by the Agents, stating that the insured were referred to the conditions endorsed on their policies, as to the particulars of their claim for loss, and that no waiver of any of the conditions would be made. The insured then made direct application for time to prepare their particulars of loss, which was refused. This fact, together with the receipt of the letter, apprised Messrs. McDonough & Kent of what they had not before suspected, and that was the determination of the Insurance Companies to avoid the payment of their loss if possible, and to succeed they would be quite indifferent as to the means they adopted—not because that there was any doubt as to the good faith of the loss, or that it had not been sustained, but rather from an unwillingness to pay their debts. It has never been disputed that according to the contract with the Insurance Companies, Messrs. McDonough & Kent were bound to deliver their account of loss after the fire within fourteen days, and such being the contract, if they did not do so they would have no right to complain of the Insurance Companies. The claim of McDonough & Kent against the Companies was \$38,000; the business they carried on was one of the most extensive in the City of London; to make out an account in detail required time, and the circumstances in connection with it demanded that the conditions should not be enforced, particularly when by doing so the Insured were likely to be prejudiced by the entire loss of their claim, and the Insurance Companies could be in no way benefited, if the desire was only to secure the delivery of a correct claim, but if the object of insisting upon the performance of the condition was to take advantage of the Insured, such conduct deserves public condemnation, and let it be understood that Insurance Companies, whenever an account can be delivered within fourteen days, have no objections to extending time, on the contrary, where the account cannot be delivered within the time, an extension of time will not be granted. Surely the great English Insurance Companies have not in this transaction shown themselves to be troubled with much liberality. The truth is, the great Royal Insurance Company, and the other lesser Companies, English though they are, after all their self-puffing, particularly as to their liberality in the settlement of losses, will not hesitate to avail themselves of a mere subterfuge to avoid payment of a loss, in fact saying in effect, Messrs. McDonough & Kent: Gentlemen—The conditions of your policies require an account in detail of your loss, to be delivered to us within fourteen days after the fire. You have by your own simplicity lost six days at the inquest; only eight days remain to make out a claim, which, we understand, will require upwards of two months in its preparation. Still, give us the account within the eight days, or we will take advantage of a condition in our policies, which will preclude you from recovering anything. Will any person after reading the letter, of Sept. 5th, consider that McDonough & Kent had not good reason for supposing that the intentions of the Insurance Companies from the first appeared to be to evade payment by insisting upon the performance of conditions that could in no way benefit them, except that the non-performance by the insured would constitute a good defence to an action brought for the insurance money. Subsequently, when the accounts are delivered, made up, as they had been, in haste, caused entirely by the Insurance Companies, they charge the insured with rendering a fraudulent claim; they do not hesitate to take advantage of mere clerical errors and omissions, which, in the nature of a large business, will occur, in order to avoid payment. The Insurance Companies have, no doubt, by this time learned that a firm whose sales in 30 months amounted to \$350,000 were not to be tricked out of the insurance, for so soon as they understood that their claim, if paid at all, would be through the intervention of a Court of Justice, upwards of 50 clerks, assistants and accountants were set to work in the preparation of the claim, and the insured were in a position about an hour before the expiration of the last day to deliver as particular statement of their loss as the circumstances of the case, and the short time allowed, admitted, the loss appeared to be \$31,000, but an affidavit served with the claim explained that while the Insured did not believe their loss to be so much, they did believe it to be \$38,000 or thereabout. Subsequent investigation reduced the loss to \$45,000. Sometime after delivering to the Insurance Companies particulars of the loss, the Agents, Alexander Davidson for the Royal; James Davidson for the Phoenix; F. A. Ball for the Liverpool and London; W. Blight for the Provincial, and Frederick Cole for the Commercial Union, met at the Tecumseh House, in London, to investigate the claim. At this meeting the Agent of the Royal, disgusted with the illiberal

conduct of the other Agents, withdrew from all further action with them, and the investigation proceeded. It was to be supposed that when the Agents met to investigate a claim calling for the payment of a large sum of money, the investigation would be conducted in a spirit of fair play, with a view not only of protecting the interests of the Company, but that the insured would receive their loss. Now for the mode adopted by the Agents could possibly bring about such a result, our readers must form an opinion from the facts. In the first place, Messrs. McDonough & Kent, as required, produced all their books, duly verified under oath, and also directed their book-keeper, Mr. Smith, to render the Agents all the assistance he could in explanation of the books. Will it be believed that the Agents, so long as no explanation was required, permitted Mr. Smith to be present, but whenever an item in the books seemed to require explanation, Mr. Smith was requested by the Agents to leave the room. After the Agents had consulted he was brought back, but not a word said to him as to the result of the secret proceeding on the part of the Agents in his absence. The result was, that after the investigation the insured were completely ignorant of the objections to their claim. In other words the Agents held the investigation not for the purpose or with the object of bringing about a settlement of the claim, but for the purpose of endeavoring to find out by what means they might be able to shirk their responsibility to the insured. Yet after a long and protracted trial at the last Middlesex Assizes, the Companies, in the opinion of all disinterested men, are considered to have made a most trumped-up defence, having charged Messrs. McDonough & Kent with improper and fraudulent conduct; they did through their Counsel withdraw and retract the charge. It has been asserted by the Agents that the fact of the first accounts rendered exceeding in amount those subsequently rendered, that this was suspicious; but when it is understood that the accounts were accompanied with affidavits and statements which fully and completely refute the idea of fraud—the insinuation goes for nothing; it was made for a purpose—the purpose being to defeat the insured, but it did not succeed. All the accounts delivered will show that the insured tried in every possible way to establish an honest claim by fair means, and that the actual loss was not less than \$45,000, some \$2,000 more than their insurance. When we consider the offers of settlement made by the Insurance Companies:—1st, \$10,000; 2nd, \$12,000. 3rd, \$15,000; 4th, \$22,000; 5th, during the trial, \$30,000; 6th, after the verdict, the full amount, less the costs, and the result of the trial, which proved,

1st.—That McDonough & Kent's loss was \$45,000,

2nd.—That they did not act fraudulently, nor were their accounts false or fraudulent,

3rd.—That the Companies must pay the loss in full, with interest,

4th.—That unwilling debtors, be they individuals or corporations, may be forced to pay their debts,

—we cannot help thinking that there is something in the old adage, "Honesty is the best policy."

61000 21
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Balance

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92715 674

1815 401
90 13

use and Produce.....
and Express charges.....

[illegible]

To Balance... \$1000.00

Quarterly Balance ending December 31st, 1863.

[illegible]

Quarterly Balance ending March 31st, 1864.

[illegible]

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Quarterly Balance up to the Fire, September 2nd, 1864.

1864.		1864.	
June 30, To balance.....	\$74700 49	July, By Sales.....	\$11037 85
July " Merchandise per Invoices.....	\$12114 40	" " Apprehension.....	244 37
" " Merchandise and Produce.....	1012 17	Aug. " Sales.....	9418 85
" " Freight and Express charges.....	85 52	Sept. " Sales.....	2467 40
Aug. " Merchandise per Invoices.....	2837 63		\$23523 60
" " Merchandise and Produce.....	1604 48 1/2	Deduct profits.....	3175 67
" " Freight and Express charges.....	57 54	To Balance.....	68184 89
Sept. " Merchandise per Invoices.....	35 81		88512 82
" " Merchandise and Produce.....	276 47 1/2	By stock saved.....	23989 19
" " Freight and Express.....	00 00	" " loss damaged.....	5325 77
1864.	\$8512 52 1/2	" " Errors and Omissions.....	
Sept. 2, To Balance.....	\$68184 59	" " Balance.....	4799 45
" " Errors and Omissions.....	1774 47		48476 19
To Balance lost.....	\$46476 19		68939 06

We, the undersigned, being called upon to make out a statement of loss, have with care gone through the books and vouchers of the firm, and we say the above statement is correct as proved to at the last Assizes.

JAMES SMITH, Book-keeper, London.
 JOHN K. M'DONOUGH, Clerk, London.
 JOHN W. WEIR, Clerk, London.
 EDWARD S. COLLETT, City Auditor, London.
 ALFRED LAING, Accountant, London.

STATEMENT OF LOSS (WITH CORRECTIONS) for the TWENTY MONTHS
comprising all transactions of the Firm from Stock taking, 1st Jan'y, 1863, to the Disaster, September, 8, 1864.

Dr.		Cr.	
	As Rendered. As Corrected and Reversed.		As Rendered. As Corrected and Reversed.
To Stock taken, Jan. 1, 1883	\$67393 68	By Stock saved damages not deducted	\$32004 47
Deduct profits	8925 43	" Sales since January 1, 1883	\$32000 16
		" Less reduction for profits	\$324177 30
			35136 59
To Stock received since Jan. 1, 1883	218967 54	By Sales per Appropriation Book	129050 71
To Produce and Merchandise received since January 1, 1883	23419 78		13701 43
To Freight paid on above	2934 21	By reduction on goods returned, say	
" Express charges on above	22 55	15 per cent. off	3069 57
To Balance	\$42922 66	By Reduction on goods returned, say	
" Damage on Stock	5328 77	5 per cent. off	936 69
		By Balance	
" Differences as per Apprb'n Book	223 81		
" Per centage in	550 66		
		By difference as per Invoice list	\$ 1593 75
		" " Day Book F	438 15
		" " Day Book G	463 34
		" Errors in Invoices	42 40
		" Balance	46476 19
			\$284672 89
			\$ 1593 75
			438 15
			463 34
			42 40
			46476 19
			\$40022 90

We, the undersigned, being called upon to make out a statement of loss, have with care gone through the books and vouchers of the firm, and we say the above statement is correct as moved to at the last Assize.

JAMES SMITH, Book-keeper, London.

We, the undersigned, being called upon to make out a statement as to the amount of money received by the Government from the sale of the above statement in correct as proved to at the last Assize.

JAMES SMITH, Book-binder, London.
JOHN McDONOUGH, Clerk, London.
JOHN WILK, Clerk, London.
EDWARD & COLLETT, City Auctioneers, London.
ALFRED LANG, Accountant, London.
A. & F. HICK, Auctioneers, London.

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CORRESPONDENCE RESPECTING THE FIRE.

London, 3rd September, 1864.

To the Royal Insurance Company and to Foster R. Biddome, Esq., agent.—Take notice, that Messrs. McDonough & Kent insured in your Company, under Policy No. 300,781, contained loss on the property insured against loss by fire, which occurred on the morning of the third of September, 1864.

Yours most respectfully,

McDONOUGH & KENT.

London, 9th September, 1864.

Messrs. McDonough & Kent,
Gentlemen:—

We the undersigned representatives of the Insurance Companies designated opposite our respective names, having come to this city for the purpose of attending to the adjustment of your claims, and from evidence adduced at the late investigation, touching the origin and cause of the fire in your premises, that your books have not been balanced, if at all, for a number of years, and that your stock has not been taken since 1st January, 1863. And even then we are led to believe very imperfectly. It is therefore not in our power to remain here while your claim is being prepared, and we can only refer you for your guidance to the conditions of the several Policies, and we require that the claims shall be made out in strict accordance therewith, no waiver being made in any of the conditions thereunto attached.

We are your obedient servants,

FRANK A. BALL for the Liverpool and London Co.

JAMES DAVIDSON for the Phoenix Co.

WM. BRIGHT for Provincial, of Canada, Co.

ALEXANDER DAVIDSON for the Royal Co.

BENJAMIN SWITZER for the London & Lancashire Co.

ROBERT WADDELL, resident agent for the Commercial Union Co.

CLAIM UNDER POLICY NO. 300,781.

To the Directors of the Royal Insurance Company:—

We, Thomas McDonough and Charles W. Kent, now residing at London, do make oath and say that on or about two o'clock Saturday morning, the third of September, 1864, a fire broke out at or adjoining our premises, occasioned, to the best of our belief, by accident, and the said property was insured in the Liverpool and London for \$8,000; Commercial Union \$8,000; London and Lancashire \$4,000; and Provincial of Canada for \$3,000; and the Royal for \$9,000; the Phoenix for \$8,000.

And we further say that at the said fire the undermentioned articles, being our property and insured under Policies No. 300,781, were destroyed and damaged wherefore we claim the sum of \$9,000; the amount thereof and the account we now deliver of our loss is as particular as the nature of the case will admit of, considering the short time we have been allowed to prepare said account.

Deponents say that the property insured in said Policy was destroyed and damaged according to the account annexed herunto, but it may be, owing to the amount of work necessary and the short time allowed to prepare said account, that the same is not correct, and deponents are unable to say in what particular, if at all, it is incorrect, but they say that their loss amounts to \$38,000 or thereabouts, as witness our hand this 17th Sept., 1864.

**THOMAS McDONOUGH,
CHARLES W. KENT.**

Tecumseh House, London, C.W., October 14, 1864.

Messrs. McDonough & Kent,
Gentlemen:—

We, the undersigned representatives of the offices mentioned against our respective names, interested in your claim for loss and damage by fire, have to inform you that we have come to London for the purpose of making an investigation of it; and to enable us to proceed with our duties, we require you, in the first instance, to furnish us with the following information and vouchers, namely:—The Stock Book as at the time Stock was last taken previous to the fire; Invoices of goods purchased and delivered in your store since said Stock was taken; Bills of Lading; Freight account; account of sales for the same period, and all books containing your accounts, and we also

PART.
We, the undersigned, being called upon to make out a statement of loss, have with care gone through the books and vouchers of the firm, and we say the above statement is correct as proved to at the last Assize.
JAMES SMITH, Esq., Barrister at Law, London.
JOHN McDONOUGH, Esq., Barrister at Law, London.
JOHN WALKER, Esq., Barrister at Law, London.
EDWARD B. COLLIER, Esq., Barrister at Law, London.
ALFRED JAMES, Esq., Barrister at Law, London.

require that the several vouchers, such as Stock Book Invoices, Sales Books, and all other books and accounts shall be verified by your oaths.

We further require you to procure and furnish us a certificate under the hand of one or more magistrates, sworn notary, or clergyman of this city, not concerned in your loss, importing that he or they are acquainted with your character and circumstances, and having investigated the circumstances relative to your loss, do know or verily believe that you have really and by misfortune without any kind of fraud or evil practice, sustained by the fire in question loss and damage to the amount mentioned in your claim. You must also understand that no course we may deem it advisable to take in the examination of your claim shall be considered as a waiver to any of the conditions of the Policies of the Companies we respectively represent.

We are, gentlemen,

Your obedient servants,

ALEX. DAVIDSON, for Royal Insurance Company.
FRED. A. BAILL, for London & Liverpool Insurance Company.
JAMES DAVIDSON, for Phoenix Insurance Company.
FRANK COOK, for the Commercial Union Insurance Company.
HARRIS SWIFT, for London & Lancashire Insurance Co.
WM. BLIGHT, for Provincial Insurance Company of Canada.

London, 14th October, 1864.

To Alexander Davidson, Esq., and the Agents of the Phoenix, Liverpool, Commercial Union, London and Lancashire, and the Provincial:—

Gentlemen,

In reply to your letter of this day's date, we beg leave to inform you that we have no objection to the investigation of our claim for loss sustained at the late fire, and we are willing and will render you all the assistance in our power, either by the production of our books and papers or otherwise. Ten Brook Book, Invoice Books, Bills of Lading, Passent Bills, Account or Sales, mentioned in your letter were all delivered on the 17th September last to John O. Meredith, Esq. With respect to the certificate you require from us, we believe that the Provincial Insurance Company is the only Company that has the right, under the conditions of the Policy, to require it; and we did procure and deliver such a certificate to the Agent of that Company on the 13th inst.; while we do not consider that we should be required to procure the certificate again, yet we are willing to do so if the conditions of the policy so require.

We beg leave to inform you that we are most anxious to have the investigation you refer to take place, so that hereafter there may be no misunderstanding. We give you notice that all our books and papers are at your service.

Yours, most respectfully,

M'DONOUGH & KENT.

P. S.—Will you refer to Mr. Meredith, for the Books, &c.

CITY OF LONDON, } We, Thomas McDonough and Charles Walter Kent of the city
TO WIT: } of London, Merchants, make oath and say:

1. That the books and papers we have and now deliver to John O. Meredith, Esq., agent of the Phoenix Insurance Company, are as follows:

Letter A.—Stock Book of Stock last taken.

" B 2.—Freight accounts.

" D 4.—Original Invoices of goods purchased and delivered to us since stock taken.

" E 5.—Approbation Book.

" F 6.—Book of account; sales since January 1st, 1863.

" G 7.—Book of account; sales since January 1st, 1863.

" H 8.—Ledger.

" I 9.—Petty Ledger for inspection at deponent's store.

" J 10.—Petty Ledger when required.

" K 11.—Stock received by way of produce, not included in invoices; and account of sales since January 1, 1863.

2. That the several books, invoices and freight accounts above described and lettered are, and each of them is, what the same purports to be, as above described. All the entries made by us therein are correct, and such entries therein as were not made by us, we believe them to be correct.

3. That we believe all said books and other papers above lettered and described to be correct, to the best of our knowledge and belief.

Sworn before me at the city of London
this 16th October, 1864.

THOMAS M'DONOUGH,
CHAS. W. KENT.

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October, 1864.
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McDONOUGH,
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McDONOUGH & KENT VS. THE "ROYAL" INSURANCE COMPANY.

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CANADA, COUNTY OF MIDDLESEX, }
TO WIT:
of Middlesex, merchants, make oath and say that the book marked H, submitted for the
examination of the representatives of the Phoenix, Liverpool & London, Commercial Union,
and Provincial Companies, contains a true and correct account of all goods sent out on
approbation of our late store on Dundas-street in said city of London, destroyed by fire on
3rd September last, between 1st January, 1863, and 3rd September, 1864, except such goods
sent out as aforesaid, and entered in books marked F and G, now before the representatives.
Sworn before me at London, this 24th
day of October, 1864.

We, Thomas McDonough and Charles Walter
Kent, of the city of London, in said County
of Middlesex, merchants, make oath and say that the book marked H, submitted for the
examination of the representatives of the Phoenix, Liverpool & London, Commercial Union,
and Provincial Companies, contains a true and correct account of all goods sent out on
approbation of our late store on Dundas-street in said city of London, destroyed by fire on
3rd September last, between 1st January, 1863, and 3rd September, 1864, except such goods
sent out as aforesaid, and entered in books marked F and G, now before the representatives.
THOMAS McDONOUGH,
CHARLES W. KENT.

London, October 24, 1864.

To James Davidson, Esq., and the other Agents,
Gentlemen—

In reply to your request that we should make
out offer of settlement of our claims against your Companies for loss occasioned by the fire
of September 3rd, 1864, we beg leave to say that we will refer our claim to arbitration—
the Companies to choose one arbitrator, ourselves another, and the two a third, and the
award of any two of the three to be binding.

Yours, most respectfully,

THOMAS McDONOUGH,
CHARLES W. KENT.

Tecumseh House, London, 24th October, 1864.

Messrs. McDonough & Kent, London, C. W.,
Gentlemen—

Your note of this date has been received, and
in reply thereto we would state at the outset that we made no request that you should pro-
pose a settlement; and as regards your suggestion, "to refer your claim to arbitration," we
must respectfully decline to assent to such a course.

We are, Gentlemen, your obedient servants,

FRANK A. BALL for Liverpool and London,
JAMES DAVIDSON for Phoenix,
FRANK COLE for Commercial Union,
WM. BLIGHT for Provincial.

Tecumseh House, London C. W., 29th October, 1864.

Messrs. McDonough & Kent,
Gentlemen—

We have to inform you that it is our
intention, on Monday evening or Tuesday morning next, to adjourn the further investigation
of your claim, in order to afford you an opportunity of procuring the several statements
of accounts we have already requested you to furnish us with, and as they come to hand,
you will be good enough to send them to the address of Mr. F. A. Ball, Liverpool & London
Insurance Office, Hamilton, who will take charge of and communicate them to the under-
signed.

Your books of account will be at your disposal before we leave town.

We are, Gentlemen, your obedient servants,

FRANK COLE for the Commercial Union Assurance Company,
JAMES DAVIDSON for Phoenix of London,
FRED. A. BALL for Liverpool and London Insurance Company,
WM. BLIGHT for Provincial Insurance Co. of Canada.

New York, 16th November, 1864.

Dear Sir—

Respecting McDonough & Kent, just as I was leaving Toronto for New York
I received a communication from all the Insurance Companies interested in the loss of the
above parties, for whom I understand you are acting, with the exception of the Royal, to
make a proposal for the settlement of the claim. The total insurance is \$38,000, of which
the Royal has \$9,000, and the other Companies \$29,000 among them. I am authorized to
offer the sum of \$12,000, proportioned to the whole \$38,000 insured, which would make
something over \$2,500 to be paid by these other Companies.

Of course this proposal is without prejudice to the right of defence on the part of the
several Companies, under all the clauses of their Policies, if it is not accepted.

I shall be glad to hear from you on the subject on my return to Toronto at the end of
the week.

Yours truly,

J. HILLIARD CAMERON.

To T. SCATCHERD, Esq., London.

London, November 21, 1864.

Dear Sir,—

In reply to your favor of the 16th inst., with a proposal for the settlement of McDonough & Kent's claim against the Insurance Companies, for whom you are acting, I beg leave to say that after submitting your proposal to them, I am authorized to say that it is declined.

Yours truly,

THOMAS SCATCHERD.

To John Hillyard Cameron, Toronto.

Toronto, December 22, 1864.

Dear Sir,—

McDonough & Kent referring to my former letter on the subject of the Insurance Companies with which insurance was effected, except the Royal, I shall be glad to hear from you, without prejudice, what sum your clients would be disposed to name for settlement. I believe that I may obtain authority to settle on the basis of \$15,000 to the whole \$38,000. This is, of course, without prejudice, and is final.

Yours truly,

J. HILLYARD CAMERON.

To Thomas Scatcherd, London.

London, 27th December, 1864.

Dear Sir—

McDonough & Kent, my clients, have read over your letter of the 22nd inst. They are not prepared to accept the sum offered, nor to name a sum that would be taken as a compromise, but they are willing to submit the matter in dispute between the Insurance Companies and themselves to arbitration—to be held here or in Toronto.

Yours truly,

THOMAS SCATCHERD.

To Hon. John Hillyard Cameron, Toronto.

Toronto, 30th December, 1864.

Dear Sir—

Respecting McDonough & Kent, I duly received your letter in reply to my last. My clients decline to go to arbitration, and as the offer I made has not been accepted, it is withdrawn, and in any proceedings that Messrs. McDonough & Kent may take for the recovery of their claim, Mr. Harmon will appear for all Insurance Companies, except the Royal and Provincial.

Yours truly,

J. HILLYARD CAMERON.

To Thomas Scatcherd, London.

PLEAS OF DEFENDANTS.

Thomas McDonough and Charles W. Kent,
Plaintiffs;
vs.
The Royal Insurance Company,
Defendants.

In the Court of Common Pleas, the twenty-seventh day of March, in the year of our Lord one thousand eight hundred and sixty-five.

1. The defendants, by Thomas Galt, their attorney, for a first Plea to the Declaration, say that the said dry goods, groceries and liquors in the Declaration mentioned, were not burned, damaged, and destroyed by fire as in the declaration is alleged.
2. And for a second Plea to the said Declaration, the defendants say that after the occurring of the loss by fire in the Declaration mentioned, the plaintiffs delivered to the defendants an account in writing of their loss or damage by the said fire and made proof of the same by their Declaration, and by certain particulars of claim attached to and referred to in the said Declaration, and in such particulars of claim represented that the said loss amounted to upwards of eighty-one thousand dollars, and declared that although they could not say that their loss is as great as shown by the said particulars of account, yet that they believed it amounted to thirty-eight thousand dollars, or about that sum, and the defendants say that the said account of the plaintiffs was false and fraudulent within the meaning of the said condition endorsed on the said Policy, and in the Declaration mentioned in this that the said loss did not amount to the said sum of thirty-eight thousand dollars or about that sum, as the plaintiffs well know.

THOMAS GALT, Defendants' attorney.

The plaintiffs take issue of the Pleas of the defendants, therefore let a jury come, &c.
W. R. MERRIDITH, Plaintiffs' attorney.

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REPORT

OF THE

GREAT FIRE INSURANCE CASE,

McDonough & Kent v. Royal Insurance Co.

TRIED AT THE MIDDLESEX, C.W., ADJOURNED SPRING ASSIZES,
MAY 10th, 11th, 12th & 13th, 1865.

(FROM THE LONDON "FREE PRESS" REPORT.)

This is an action to recover the amount of a policy on their loss by fire on a stock of dry goods and groceries, contained in a building insured by the plaintiffs, which defendants refused to pay for various reasons, namely: fraud, overcharge, and false swearing in their account rendered by the plaintiffs to the defendants. The plaintiffs claim \$9,000.

This action is one of six which the plaintiffs have brought; the first against the Royal Insurance Company for this claim; against the Commercial Union for \$6,000; against the Phoenix Co. for \$8,000; against the Liverpool & London Insurance Co. for \$8,000; and against the Provincial Insurance Co. of Canada \$3,000; against the London and Lancashire Company \$4,000. Total \$28,000.

The defence is the same, we understand, in all the cases. The number of witnesses for the plaintiffs was 81, and it is supposed that the case will take up the rest of the Assizes.

Thomas Scotchard, Esq., opened the case on behalf of the plaintiffs by a statement of the evidence about to be brought forward on their behalf, and showing how it was that though the first calculation of loss was over \$80,000, yet when another calculation took place, it was reduced \$20,000, and yet he said there may be errors in the calculations to reduce the gross amount, yet all this will not reduce the total amount to within several thousand dollars of the amount of their insurance. The learned counsel further remarked, that it was no wonder that such errors took place when the invoices filled two large volumes, and numbering over two thousand invoices; also that the plaintiffs agreed to leave the case to arbitration, which was refused; and further, they now are trying to brand the plaintiffs' character with fraud. The manner in which they came to the amount of the loss was by taking the goods on hand at their stock-taking in 1863, adding all the goods bought, and by taking from this sum the total sold and the quantities saved from the fire showed a loss at that time of \$48,240.

John K. McDonough sworn.—Am in the employment of Messrs. McDonough & Kent, and have been for several years; was in their employ at the time of the fire on 3rd of Sept., 1864; there was a shed in the rear of the grocery store; it was used as a store room; on the 2nd of September we had goods in the shed, and in the cellar under the brick store on North street, also on the first and second flights of the Dundas street building; the building on Dundas street was frame, that on North street was of brick, three stories high, with felt roof; the front store and shed were totally destroyed—the rear one was saved with the goods contained therein; the total amount saved was about \$22,000; the damage to the goods, in my opinion more than the appraisers allowed; Mr. Birrell, Mr. Gregston, and Mr. Barnard were the appraisers; helped to take stock on the 1st of January, 1863; the book now put in is the stock book, in which we entered all stock on hand at that time.

\$97,293.81, with deductions of profits, but there was an error of \$39, 61 in extending one item in said book; the stock book is almost all in my hand writing, except the extensions, which are in Mr Anstie's handwriting; I examined goods as they came in with the invoices; a list of all the invoices I examined I have made an abstract of which is now produced, which enables me to speak positively of those goods which I received after January, '63; the amount is \$74,541.51; ascertained the amounts of the sales every day by counting the cash in the drawers, and the books showed the amounts credited; the cash sales were entered every night in the day book first, sometimes perhaps in the morning; there was a regular cash book kept into which the sales in the day book were entered; book produced contains the invoices; we were in the habit of getting produce from farmers; if there was an even exchange there would be no mention made of the transaction; if we received part in money, that would be carried into cash; the dry goods and groceries, and a little hardware, constituted the stock; produce received at any time was charged as stock; the book now shown me and marked "O" is the cash book; the amount of the loss at the fire, according to my opinion, is as the statement rendered to the companies, which is \$46,561.25, subject of course to some errors. Our business was about the same at the time of the fire as in 1863, and our stock was just as large; there were a great number of people employed in making up the accounts, as the time to the 17th of September was very short; the paper now shown to me is a list of the people employed, numbering some 57 persons, some few persons have been employed since; there were six sets of statements in detail to be made up; there were six copies of the stock book made out, one for each Co.; it was a wonder that we were so correct as we were.

Cross-examined.—The amount of the produce received between 1st Jan. '63, and the time of the fire, Sept. 3rd, '64, was \$25,524.78; that does not represent all the produce that came into the store; it is impossible to tell how much besides this came into the store; there was other produce continually coming in; all the goods exchanged for money were not entered; but the amounts received for them went into the cash sales of the day; if we received \$100,000 worth of goods and \$20,000 of it were exchanged there would still appear to be \$100,000 worth of goods; if we sell \$100 worth of produce for cash that would appear in the cash sales, reducing the amount of the stock \$100; if it was made on credit it would appear the same way; McDonough and Kent's cash books consisted of a day book and sale book; the goods in the back addition, between the store on Dundas street and the storehouse on North street, were all destroyed; none of the goods in the back storehouse were burnt, but considerably damaged by removal; the goods consisted of sugars, teas, &c.; the second flat was used for dry goods; a quantity of goods were removed; the goods were general groceries; were valuable; there was not a very large quantity; could not tell the amount; whiskey and salt were kept in the shed; the upper part of the house on Dundas street was divided into eight rooms, containing groceries; there was no dry goods up stairs; was at the fire pretty early; live north of the shop; came down on North street; the back door was open. Went into the office and found parties removing the books; the office at that time was not on fire; went down to the front part of the dry goods department; there were a good many parties there; the fire was then coming through the east wall; the dry goods were being removed; the grocery door had not been opened at the time; took out one armful of dry goods; carried them back into the Engine House on North street; I then returned and opened the grocery door; assisted very little in removing the groceries; heard an explosion which made me retire; I was not in the store many minutes; did not remove any groceries; left the store about 3 o'clock p.m.; came to the fire about two o'clock a. m.; there were considerable quantities of dry goods removed; all that was saved of the dry goods was from the front store; the amount of dry goods and groceries saved is \$22,000, which is the cost price subject to damage; total amount saved of dry goods and groceries over \$22,000; have been at taking stock in other places; some take it at cost prices; in this case it was taken at selling prices; there were several engaged in taking stock in 1863, among whom were B. Kent, J. Weir, H. P. McDonough, Peddington, myself and W. Kent; measured all the dry goods except those with the trade mark; the mark would be on the outside; entered the measurement on loose sheets of paper, which were copied into the stock book by myself; most of the extensions were checked by me shortly after: none of these extensions were carried out since the fire except one

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I in extending, except as they made any of those ascertained, and the night in the cash book contains there was; if we read groceries, any time was cash book; the statement to some as in 1863, the employed was very, being some of state- k made out,

an. '63, and sent all the besides this the goods for them went and \$20,000 goods; if we reducing the same way; the book; the storehouse house were sugars, teas, removed; quantity; upper part taining gro- ive north of into the not on fire; good many goods were book out one th street; I moving the store many p.m.; came of dry goods the amount subject to ave been at was taken among whom W. Kent; rk would be which were ooked by me except one

item, which was carried out wrong; the deductions off the dry goods was 15 per cent, and 12 1/2 per cent off the groceries; made no examination of the invoices; some of the stock was old, but not very much; did not keep any goods that would lay on our hands; do not know when Messrs. McDonough and Kent increased their insurance; have heard since the fire that the insurance was increased; never was told by the plaintiffs how much it was increased; their average amount of stock was from \$62,000 to \$65,000; their assessment was for \$20,000; the list of invoices is only those received since January '63; have checked all of them; worked at them for about three months; completed the checking of them, when the account was handed in to the companies; the difference in the first and second statements was \$23,504.85; owing to errors of various kinds made by those who assisted to make up the account; there were errors in produce book of \$3,080; in day book of \$4,240; in invoice list No. 1, \$327.00; among them was an invoice of goods bought from Thos. Kirkpatrick which I find was entered in day book and invoice list, thus making stock twice chargeable with the amount of goods bought, which shows the general character of the errors; errors in invoice list No. 2, \$2,586.00, the errors are the same as in list No. 1; the plaintiffs having purchased goods an invoice was taken and a corrected invoice was afterwards sent, and both invoices were charged; the item in invoice list 142 is included in 133; the item 143 included a statement of a similar invoice; the invoices in this book are from six different firms; they are in one handwriting, that they were goods purchased in Montreal by one Mr. Kent, and forwarded by Mr. Crawford, and I believe they are struck in his handwriting; they came from Lower Canada, and that they are in the same handwriting I believe; there are some errors in the additions, for instance, \$8.50 is carried out as \$350; there were some persons who purchased goods at 5 per cent advance; did not sell any goods at cost, nor do I believe that any one else sold at cost, except under special circumstances; next item in errors as goods per approbation book \$12,701.43; the sum \$12,701.43 is at 5 per cent advance included on it; this amount was for goods sent out to customers and were not final sales, but to see if they would suit, and if they did not suit they were returned; they were entered at cost with the 5 per cent added; the book commences in February, 1864, and ends on the 14th of July, 1864; the entries are all in the handwriting of Mr. Kent; these entries were not checked in any other book from the approbation book; some of the goods were returned; did not know before the fire that there was any approbation book; knew that goods were sent out on approbation, but thought they were entered in a general book; these entries do not appear in any other book against those persons; error, \$464.56 was for goods which had arrived at the station after the fire, and was put in the invoice list; the difference between the second and third statements is \$13,087.09, which is made up of errors and wrong additions; the sum of \$237,635.66, which is made up of sales cash and credit since January 1, 1863; do not know the amount of cash sales and credit sales; our credit sales were as large as our cash sales, as far as I know; in January, 1864, the cash sales were \$4,337, and the credit sales \$5,462.11, being a total \$9,799.11, for the month, and a difference of \$1,125.11 in favor of credit sales over cash sales; on December 30, 1863, the cash receipts for the day were \$219, and received on account \$663.

John K. McDonough's examination continued—The paper now put in and shown to me is a statement of the goods sold at 5 per cent; the amount of the goods sold at 5 per cent profit from 1863 to 1864 was about \$50,000; there was a jobbing trade at which we sold goods at 10 per cent profit, the amount of which was about \$18,000; the highest average profit was 27 per cent, and the lowest was 5 per cent; there were some sales made to special customers at cost, but I believe it was only sugars, and was included in the \$50,000; the total amount of sales was \$250,337.09 and the profits on the gross sales were 42,760.95; we distinguish the goods which were in stock in January, 1863, from the other goods by the prices marked on them. The average profits marked in the recapitulation is less than the amount of profits realized. The same amount of profits is put in the second statement; the gross amount of the sales from January, 1863, down to the time of the fire was \$237,635.65, and there were special sales to customers of \$12,701.42, which made a total of over \$250,000; the total loss, after deducting 35 per cent from some goods saved from the fire, and 20 per cent from others, is \$48,248.42; there is a difference of \$20,000 between the stock received in the first and third statements, which is owing to invoices being charged twice, &c.; do not know

whether there is any merchandise account; do not keep the books; do not know that there was any stock account; there was no account of that kind kept up; not think there is any general cash account; the amount of money received was from all sources—it was not all sales; it might include rents; cannot state positively; cash sales were kept distinct from cash received on account; money received on mortgage notes was deposited in the bank; don't know whether any account was taken of it; when any account was settled by note there was no mortgage taken of it, and there was no entry concerning it in the cash sales or cash received on account; all money taken over the counter was put in the till, and after counting it credited to the cash sales; when produce was bought for cash the amount to be paid was drawn from the safe, or paid by cheque on the bank, but it was not taken from the till; don't know what account was kept of it in the books; there was no regular account kept of it to the best of my knowledge; when produce was exchanged even there was no entry made of it; one item would balance the other; of these goods on approbation, there was none of them sold before February, 1864; before this, if goods were given out on approbation they were charged in the blotter to the person, and if returned he was credited with them; there was none of the goods entered in the approbation book entered in any other book; there might have been, but I don't know of any; the marks in red in the approbation book mean the sales in different months; they were considered as sales; the book was kept by Mr. Kent, to assist Mr. Smith; never remember seeing the book till after the fire; knew that goods were going out in that way; none of the special customers were interested in the firm; the average profits were struck when we were preparing the balance sheet; there was 12 per cent on groceries, and 15 per cent on dry goods, and this average percentage was, I believe, rather under than over; made a calculation to satisfy myself and came to this conclusion; the reason why the Montreal invoices in Crawford's handwriting got in stock was that Mr. Kent being in Montreal bought some goods for Mr. Crawford to the amount of \$3,000, who sold them again; these invoices were brought up here by Mr. Kent, and got by a mistake put into the invoice book; Mr. Crawford was a commission merchant, and the reason Mr. Kent bought to sell again to Mr. Crawford was because Mr. Kent could buy more advantageously; am satisfied the last statement is correct; there are errors of amounts of invoices charged in American money, entered in the first statement as if in Canadian funds; the difference in the invoices between the first and third statements amounts to \$1,000, and are mainly owing to wrong additions; the invoices were checked by whatever clerk received them, and they would not be checked if not received; the invoice now shown me is an English invoice, but does not bear the Custom House stamp upon it; it is goods purchased from John Vane and not included in the third statement. [The greater part of this morning was taken up by the witness explaining minutely how the errors occurred, and showing the whole transaction. The Court adjourned at 1 o'clock for half an hour, in order to give the jury time to stretch their cramped limbs, and fill their half starved stomachs, and was very much relieved by them.]

Examined by Mr. M. C. Cameron.—If the cash book "C" had not been in the hands of the Companies still they had the same information in the day-book and invoice book; when I arrived at the fire it was burning very rapidly; there was an explosion which caused the people to leave the building before much was saved; the fire was of short duration; in making up the invoices for the Companies, Mr. Irvine had the superintendence; they were supposed to have been taken off correctly; when we found them incorrect we sent the Companies the corrected statements; know Mr. Beddome, local agent for the Royal Insurance Company; have seen him in the store; never saw any one with him in the store before the fire; the letter now put in and shown me is, I believe, in the handwriting of Mr. Beddome.

Frank Peddington, sworn.—Was in the employment of plaintiffs one year and a-half; went to them in January, '62; left them in September, '63; stock was taken when I was with them; my duty was, under Mr. Kent's instruction, to arrange the stock; during the time I was there goods to a large quantity were kept up stairs; their stock was always kept up pretty full.

Cross-examined.—Another porter assisted in weighing broken parcels; saw them measuring the goods, but did not measure them myself; up stairs there was mostly

dry goods ; some spices and woodware, and a little hardware were also frequently kept up stairs ; the shed in the yard was stored with goods ; the shed was crossed when I was there.

John W. Weir, sworn.—Am in the employ of the plaintiffs, and have been since February 1863 ; stock was taken in the beginning of 1863 ; assisted in arranging the goods on the shelves ; never assisted at stock-taking at any other place ; checked the paper now produced and showed to me, which is a list of invoices checked as received by me to the amount of \$108,581.19 ; they are different to the invoices as spoken of by Mr. McDonough ; the stock was always full ; they had as much at the time of the fire as they had in Jan., '63 ; they were in the habit of exchanging goods for produce with the farmers ; never paid money for produce ; have examined the charges for freight, and found them correct ; have examined the stock damaged at the fire ; thought the appraisers hardly liberal to the plaintiffs ; the establishment was pretty full the day before the fire ; noticed no decrease ; was at the fire ; came immediately after the explosion ; it was on fire in the centre ; there was lots of goods in the building then.

Cross-examined.—Think a larger percentage ought to have been allowed ; some of the damaged goods have been taken into stock ; they have been sold as a general thing below 20 per cent discount ; sold them on North street ; there were a few other goods purchased ; the goods saved were dry goods and groceries ; the groceries looked the largest in quantity ; all were damaged more or less—more particularly tea ; the liquors were damaged a little ; there was not a large quantity of liquors ; have been the chief clerk in the grocery department for some time ; there were a number of chests of tea saved ; some sugars were saved, but much damaged by water ; had nothing to do with the dry goods ; Mr Archer, Mr. O'leghorn, and Dr. Farrar were the appraisers for the groceries saved ; helped to prepare a list of damaged goods saved ; helped to check them ; all the saved stock was entered at cost prices ; took the prices from the invoices ; our price book would show the cost price ; the paper now produced and shown me is the list prepared by me and is in my handwriting ; know that all the articles on this list came into the store ; checked invoice No. 488 myself ; invoice No. 530, amounting to \$228.30, I checked myself ; also invoice No. 563, amounting to \$44.33 ; the goods named were most of them from Montreal, some of them from Hamilton ; the invoices checked were from Jan. '63 to 22nd of August '64 ; cannot tell the amount of goods received in August.

Benjamin Hodgins, sworn.—Was in the employ of the plaintiffs from October, '63, to September, '64 ; checked invoices of goods received into the establishment, to my certain knowledge to the amount of \$13,900 ; the stock was not allowed to run low when I was there ; have been to the States since I left them ; they had an average stock on at the time of the fire ; never knew the exact amount of goods in their store ; I believe there was a large portion of the goods destroyed at the fire ; arrived there after the fire ; was in the dry goods department.

Cross-examined.—Recognize the paper now shown me as the correct list of the invoices of goods checked by me ; the invoices all bear my mark of being checked ; was aware of goods going out on approbation ; cannot tell the exact date when they went out ; did not know before I came of goods going out on approbation, but assisted in making up parcels shortly after going there ; never saw the invoices of the goods ; when I sold for cash the money was put into the till ; there were two separate tills kept ; one for the dry goods and the other for the groceries. If I gave money for produce out of the till, I put a voucher in the till for the amount, and the voucher was counted up in the sales ; did not make any entry of the produce received ; marked in my pass book all the sales made, and the book-keeper made up my book in the evening ; what I sold to jobbing customers the book-keeper made up the invoice and put my initials to it ; the general rule was for the book-keeper to receive all money paid on account ; have seen Mr. McDonough send parties to the book-keeper when they were going to make payment on their accounts.

Re-examined.—Went with Mr. Kent to get more time allowed the plaintiffs to give in their statement, which was refused ; it was some time in September ; we called on Mr. Beddome and Mr. Meredith.

Edwin Kent, sworn.—Am nephew of the plaintiff Kent ; was in the employ since June, 1861, to the present time ; was there at the time of the fire ; chiefly groceries

were kept up stairs; produce was continually brought into the establishment; it was chiefly butter, eggs, bacon, &c.; we kept an account of produce; plaintiffs' stock was very well kept up; it would be rather difficult to tell whether it increased or decreased \$5,000; was at the fire early; assisted at the fire; there was a very considerable quantity of goods burnt; cannot form any opinion of their value; helped with Mr. Weir to arrange the goods for the appraisers; there was an account of the goods saved made out; the book produced is one of the books with an account of the groceries saved from the fire; they were appraised by Mr. Cleghorn, Dr. Farrar, and Mr. Archer; Weir and I measured and weighed all the groceries; we did not put all the prices at that time; afterwards the remainder of the prices were entered.

Cross-examined.—The books were made up after the goods were appraised; the goods were appraised by the gentlemen going through the stock; the goods were not separated; none of the goods appraised were sold till after appraisement; Mr. Williams and Mr. Archer made the entries; the cost price was on the goods; if there was no cost price on them we took the price from the price book; the goods were in the brick store on North street when appraised; the dry goods and groceries were separated; there were some goods carried out at the fire; a great many were burnt; assisted in carrying goods out, a goods many loads; took them from any place that came handy; there were a good many people in the store, but the explosion cleared the store pretty rapidly; the goods were carried to the engine house and store on North street.

Wm. Archer, sworn.—Am in the employ of Mr. F. Rowland; was one of the appraisers for the groceries of the plaintiffs saved from the fire; Mr. Cleghorn and Dr. Farrar were present also; we looked over the stock and and put a value upon them; the amount appraised I do not recollect; the amount of percentage allowed was 20 per cent off cost price on goods in a perfect condition; they were depreciated by being removed about; teas being removed about would not sell as well; smoke will affect tea very much.

Cross-examined.—The appraisement took over half an hour; we were there more than 15 minutes; some we appraised as damaged to the extent 95 per cent; a large quantity was lying there burnt into a mass; cannot tell the amount assessed at 95 per cent; they consisted of candles, tobacco, and hardware; cannot tell the amount on which we appraised 20 per cent; was not present when all were taken down; some were taken down when we were there; the damage was chiefly from removal; they had not a marketable appearance; the teas were all mixed up with other articles; never signed any appraisement; entered a lot of goods in the appraisement; never saw the book produced; never appraised any castor oil; no recollection of any of the articles; the nails were melted together like candles; examined some of the articles which we appraised at 20 per cent; recognize some of the entries in the book now produced and shown to me as in my handwriting; some of the articles were injured to more than 20 per cent; some even as much as 95 per cent; cannot say that some of the articles were utterly valueless.

Andrew Cleghorn, sworn.—Am in the grocery business; am not in the habit of making appraisements for the Insurance Companies; made one for the plaintiffs' after the fire in September, 1864; made it in a building partly destroyed by fire, at 95 per cent, and some in a brick building on North street, at 20 per cent; would not have taken them at 20 per cent;

Cross-examined.—Do not know that any of the goods had not been subjected to fire; most of the loose goods were in the rooms up stairs; appraised them about one week after the fire; we just looked at them; the chests of tea were very much destroyed; some of the boxes had been opened and injured by water; spent three-quarters of an hour in the appraisement; the articles appraised at 95 per cent were totally useless; they were all in a heap; had nothing to do with the dry goods; signed some sheets some time after; was told they were lists of articles of the goods which I had appraised; the paper now produced and shown to me is one of the sheets I signed; these goods were represented to me to have been the goods I appraised; cannot tell how long after the appraisement I signed the sheets; think it was about ten days.

John W. Weir, recalled.—Assisted to take the stock before the appraisement, and the entries were in the book now shown to me, but the prices were not all in; the list rendered to the Insurance Companies was the same as the appraisers

signed; the goods in a heap were put at their full value, and the appraisers took 95 per cent off them; we did not consider them worth anything; we took stock immediately after the fire investigation; we were about two and a half days doing it; called the articles out to others who entered them in the book; the first article is cream-of-tartar in tins and fifteen pounds each; Mr. E. Kent entered the first entry; nearly everything in the North street store was removed during the time of the fire; the goods appraised were brought into the store from the street; none of the goods were taken to Mr. Wm. McDonough's store during the fire, the worthless articles were taken there after the appraisal; we assumed if the article was not broken that the weight on the outside was correct; broken packages were weighed; most of the goods were mixed up with the new stock, for the purpose of selling them.

John Birrell, sworn.—Am a wholesale dry goods merchant in this city; was called by plaintiffs to appraise some goods damaged at their fire; the amount I appraised was about \$5,000; the paper shown me is the list appraised, and the damage altogether on the whole stock was 35 per cent; did not sign any book with inventory of goods; helped to appraise the dry goods; would not give 65 per cent for them; there was mud on them and other damage; had they been a bankrupt stock they would not have been able to sell them for 13s. in the £.

Cross-examined.—The goods consisted of cotton, &c.; opened several pieces; we were about three-quarters of an hour examining them; seemed a small quantity to save out of such a large stock; they were in three rooms; some worth much less than 65 cents on the dollar; had nothing to do with the groceries; they were in a brick store on North street; cannot tell whether there were many valuable articles among them; have supplied the plaintiffs with goods during '63 and '64.

Re-examined.—Have been in the plaintiffs' store frequently; they did a large wholesale trade; \$38,000 would not have been out of the way for them to lose; I think their dry goods were worth 30 to \$40,000.

Peter C. Barnard, sworn.—Am an auctioneer and appraiser; was called upon by the plaintiffs, with Messrs. Birrell and Gregsten; we valued them at 35 per cent; came to the same conclusion as the others.

John Gregsten, sworn.—Am a dry goods merchant; was called upon by the plaintiffs to value the goods saved from their fire; appraised them at 35 per cent off; saw the book then.

David Farrar, sworn.—Am a wholesale grocer; was called upon with Messrs. Cleghorn and Rowland to value the plaintiffs' stock; made an appraisal on some at 35 per cent damages, and another lot at 25 per cent; some parcels of goods cannot be removed without suffering material damage; think it a fair valuation.

Cross-examined.—Buying produce we credit them with the produce, and charge them with the goods; this is the only way I can understand it can be done satisfactorily; if however, in the retail business there would be no entry of an even barter; did not sign the appraisal; recommended an affidavit of those who took stock when asked to sign the appraisal, so as to guarantee that these were the very goods; there was some small quantity not damaged.

Thos. J. Irving, sworn.—Am a practising attorney in this city; had the superintendence of Nos. 1 and 2 invoice books; had to make up six statements for the Insurance Companies; commenced on a Tuesday; the papers were delivered; the books now produced and shown to me are the books; had to make a list from whom the goods were purchased, and the description of the articles; had twelve assistants; commenced the Tuesday after the fire inquest; made the minute now shown to me as given by Mr. C. W. Kent, and it is dated Sept. 13th, '64:—1, Omit all invoices marked entered, as entered signify that stock has been increased by an entry in day book; 2, add 6 per cent to sterling invoices to cover difference in currency, and transit insurance and duty; 3, deduct from American invoices to reduce them to current money—then add the various duties that the various classes would be subject to; 4, leave out all statement unless in those cases where a purchase is combined. Have had some experience in mercantile business; had the statements made out as first delivered to the Companies; there was no opportunity to check the statements; saw a large number of employed in Mr. Wm. McDonough's store making out invoices; any more persons making out the invoices would only have retarded the work.

Cross-examined.—Never had anything more to do with the invoices after they were made out.

Re-examined.—Found a good many marked entered; they were mostly from parties in this city; received instructions to reduce the amount of the invoices which were in American money to the current rate of exchange on the day of the arrival of the goods here; there was a discount of 20 per cent taken off some of the American invoices; the American invoices were not very numerous; took a number of these invoices and went to the Custom House and found the rate of exchange fixed by the Government, and whatever was the Government discount for American money we deducted so much from the invoices; the mistakes may have been owing to invoices being wrongly entered by some of the young men assisting me; the invoices were not entered in consecutive order.

Henry P. McDonough, sworn.—Am a half brother of Thomas McDonough, of Messrs. McDonough and Kent; went into their employ in February, 1862, and left them in March, 1863; during the time I was there stock was taken; think it was about the 1st of January; cannot remember whether it was begun or ended at that date; assisted in taking stock; the book now produced and shown to me is the book containing the amount of stock on hand at that time; between January and March the stock was very well kept up; there was a very good stock on hand; have been in their store since that time; the store was very well filled, and the stock as large as when stock was taken; having been a clerk then, would have been able to state whether any considerable reduction in the stock, but no one in my opinion could if there was a reduction of \$5,000 or \$10,000.

Cross-examined.—Don't recollect whether I had been up stairs very shortly before the fire; the stock up stairs and in the brick store on North street was very frequently seen by me; don't think a person would notice any slight decrease in the stock; cannot tell what proportion the stock up stairs and the brick store on North street bore to the whole stock; my opinion was that the stock was heavier than was necessary; always thought the stock was kept up; was in the store frequently.

Wm. F. Finlay, sworn.—Am an accountant; have been in the employ of Kerr Brown & Co., Hamilton, for 8 years; was called upon by the plaintiffs to examine the statements; could only make a partial examination; examined the two lists of invoices; examined the vouchers for freights paid; my examination was after the corrected lists were put in; found the statements pretty correct considering the size of it; the paper now shown to me is my corrections which make a difference in the two lists of \$1,532.75, and found from the approbation book errors of \$223.81 in their favor; made out a balance sheet showing the difference which I found.

Cross-examined.—Did not go through the whole list, but only through the lists of vouchers paid for freight, and the list taken from the approbation book; was aware that they had no merchandise account; common thing among country merchants to have no merchandise account; found also they had no cash account, a very unusual thing among merchants; plaintiffs explained about the exchange of produce; the same has been proved here to-day; cannot state anything about the stock; went very carefully into the invoice list; did not check the invoices; examined that they were invoiced and that they were *bona fide*, and found that some invoices had been charged before; went over the approbation book and compared it with the list they furnished me; found there was no account taken of goods out on approbation in the ledgers; the approbation book was mostly in the handwriting of Mr. C. W. Kent.

Edward S. Collett, sworn.—Am a practising attorney in this city; have been engaged in the mercantile business; am City Auditor; was called on by the plaintiffs to examine the last statements showing their loss to be over \$48,000; they allowed me every opportunity and every entry seemed to have been made in the usual way of business; there was no intermingling; I believe it to be substantially correct.

Cross-examined.—Only know about the figures; think the profits are calculated low; was engaged for nearly a month; examined all the sales books; found some errors, which had been corrected, and which I gave to the book-keeper to make into a list, which he did.

Alfred Lefing, sworn.—Am an accountant; was called upon by the plaintiffs to investigate

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the statement they made to the insurance companies; their books showed everything was correct; the third statement I believe is in the main correct; cannot say anything respecting the sales or the profits.

Cross-examined.—Have not gone into the question of profits; my duty was to investigate the books; examined only the third or last statement; discovered the same errors which Mr. Finlay had; had nothing to do with the books till after Mr. Finlay.

James Smith, sworn.—Am book-keeper of the plaintiffs, and have been for five years; was aware of stock having been taken by them in January, 1863; took no part in it except making the first entry and headed the book; this entry was not made after the first Jan., 1863; the commencement of taking stock, it was on the 1st of January; know the invoices; they were not immediately put into the invoice book; they often accumulated on the file for a month; the stock was always pretty well kept up; think they steadily increased the amount of their stock; at the time of the fire the stock was rather more than usual; think a large portion of the stock was destroyed; the statements have been corrected and investigated until I think the last is very correct; think the profit put on the goods was low and rather under the usual profit; was aware of the books given to the Insurance Companies; the Insurance Companies saw the approbation book; appeared before the agents of the Companies; was before them for four days; they were there for two weeks; they frequently sent me out when they came to any invoice or entry that they could not understand, whilst they would discuss over the matter relative to an attempt at fraud; I would now and then explain how this list had been made out and how hurriedly; had to employ a large staff to get our statements ready: when the agents came in and asked me how long it would take to make our claim, I told them two or three months: money received on mortgages might in some cases get in the cash book; they commenced to arrange the stock for sale on the 10th of November: from the fire to that time the stock was not disturbed; asked the agents if they wished any one to appraise the goods: do not recollect the nature of their answers; Mr. Anstey extended the stock book on the 9th of February; certain that day is correct from a memorandum of having paid him for his services.

James Smith, cross-examined by John H. Cameron, Q. C.—Have been in the employ of plaintiffs going on five years: was acquainted with the amount of insurance on the property; no entry of policies in any of their books; the insurance was very much increased; the policy of the Royal was only effected this year; the Phoenix was increased, and also the London and Lancashire: the Commercial Union was a new policy; the Provincial policy for \$3,000 was a new one: the London and Liverpool was a new one: the application now put in is the application for a policy to the Royal Insurance Co.; never saw this before: this is the handwriting of Mr. McDonough: Mr. Kent attended principally to the invoices; the invoices were first put on the file and when they had accumulated they were pasted in the invoice book by Mr. Kent and if he was away I have frequently done so; am satisfied that the prices entered in the stock book were the retail prices; had nothing to do with the profits; Mr. Kent gave me instructions to take the percentage off; the stock of dry goods in Jan. '63 was \$28,339.84, the profits deducted were \$4,350.96; the groceries were \$38,914.13, and the profits deducted were \$4,669.72; the net dry goods stock amounted to \$24,088.88; the net amount of groceries was \$34,244.46; the profits were taken off the stock by making an average; the average profits were 13½ per cent; the approbation goods amounting to over \$12,000 commenced going out some time in '63; have seen the entries of them in '63 and '64; some of them appeared in the ledger when they became final sales; they were not distinguished in the ledger; Mr. Kent kept the approbation book to assist me, and when they became final sales he had them entered in the day book; can show entries of this description; the entry in the approbation book, "Thos. Kent, 2 chests of tea—\$118.65," is entered in the day book; never checked any goods going out except what I sold myself; knew such a book was in existence; made one or two invoices from this book; Mr. Kent told me that it was to save me making large entries in the day book that he kept the approbation book; there were some entries of goods out on approval before this book was commenced; kept the produce book "F" and "G;" posted them up from the day book; any exchange or barter would not appear; if a man brought in a bag of butter on his account it would be entered as cash and the butter would go into stock; where money was paid for produce there was no account taken of it; sometimes articles were bought and an invoice taken, which, of course, went into the invoice book; for instance, George Lovell credited with one bag of butter, \$11.93, which went into stock; if a special customer returned goods they were entered as produce to balance the account; when there was a debt due to us we opened an account; when we owed a person a debt we did not open an account; don't know of any goods sold at cost except apparels sold to Messrs. Siles & Kent, and D. B. Strathy; the item of 7110 lbs. of butter sold to Mr. Duagall, Montreal, had been accumulating for some time, and most of it had been bought with goods on which we had the profits; it is charged at 12 cents per lb.; cannot tell whether it was

sold at cost; cannot say whether 10,389 lbs. of butter sold to Mr. Hunt at 12½ cents per lb., and amounting to \$1,288.63 was at cost; the entry "Thomas Kent, Dr., per order, goods sent, nothing on"—means no profit; this may mean that the 5 per cent was added previously; am not prepared to say that "nothing on" means there was no advance put on the goods; think it means that there was only 5 per cent taken off; it is not taken off in the last statement furnished the Companies.

[Some considerable time was taken up by showing that a number of invoices of goods sold to special customers with "nothing on" really included the profit, and which, consequently, showed a lesser quantity of goods sold, but a greater quantity on hand at the time of the fire; the defendants counsel contending that they should not be charged with profits if the plaintiffs could not show that they bought for less than they sold them and if they were charged with them; the plaintiffs had more on their books than there was in reality, by about \$1,660, for as much more as the plaintiffs charged them the profits were so much more the loss to the defendants. Both counsel took a considerable amount of time in discussing these points.]

Examination continued.—There is a list of goods sold at 5 per cent amounting to about \$37,000; knew that there was such a list made out by Mr. John McDonough; those goods on which only 5 per cent were charged were in the ledger marked by Mr. Kent's instructions with "nothing on" except sugars; Mr. Kent told me he had already put the advance on them; the per centage is added to the first cost and taken off in the corrected statement; Mr. William Clark was a special customer; do not know of any case in which goods were charged to Wm. Clark at a higher advance than 5 per cent; Strathy, of Clinton, is another of the special customers to whom we sold goods at an advance of 5 per cent profit; in some of these cases in which there does not, in fact, appear to be anything put on, there was really some advance put on by Mr. Kent; he told me he invariably did so; know of no particular case in which he did it; have seen the statement of the \$37,000 goods sold to special customers; it was checked by Mr. McDonough; the produce and merchandise is increased from being in the first statement \$23,419.78 to \$25,324.78 in the third, and is owing mainly to wrong additions and omissions; can show one omission of \$1,000 and the item \$381.37 on the 31st of August; there was nothing charged in the first list, but in the corrected list it was put in; the reason why it was not charged was because it was an omission; the goods which made up the item \$381.37 was for dry goods, and was entered by me when Mr. Kent was absent; the goods had been sent to Thomas Kent on approbation, and had been returned, but had never been entered in the produce and merchandise book; the items of \$68.30 and \$48.52 are explained thus, they were for candles from J. D. Dalton on Jan. 3rd, 1863, and had been omitted; the first one was delivered on that day and the entry is in my handwriting; do not know that they were omitted because they were in the produce book; Mr. Kent's instructions were to omit from the day book all such invoices and to put them into the produce book; the next item of \$50.54 is omitted in the same way on account of there not being time to transfer them; another item, \$38.02, is for candles, and occurred in the same manner; do not know whether there were any invoices; the goods were received, a receipt given at the end of the month; a statement was made up; \$65.42, no invoice for this amount; it was for goods from Dalton; there was no invoice for it; item \$64.61 is, just the same; item \$2.63 is for merchandise returned; \$126.46 was for goods from Dalton, and consisted of candles; the next is for boxes returned which amounted to \$10.40; the amount \$41.88 is for candy from Downes.

The amounts \$311.25 and \$19.11 are invoices of butter from Messrs. Stiles & Kent, and was omitted; both these, like the others, were taken in as produce; cannot tell whether these were in stock at the time of stock taking; \$74.05 is the amount of woodware bought from Lewis & White, and which came into stock through the produce account; the account of Hall was increased from \$56 to \$72; the reason was that he was credited with cash, which was taken for the full amount; the account of Macklin for \$35.94 there was no invoice for; this account was omitted; McDonald's account for butter and eggs was also omitted; the amount was \$16.76; the next is a credit to Niven & Co., of Montreal, for herrings, amounting to \$15.06; there was an invoice, but it was not entered in the invoice book; there was a difference in the freight between the two accounts; the reason was that the freight was on British goods, which was covered by the advance of 60 per cent; the freight which was down in the first statement as \$3 163.43 should have been \$3 514.59, which were the true figures after deducting the express charges; the sales are down in the first statement for \$234,177.80 and in the third statement was \$237,625.66. The following mistakes occur in day book "F," and are mainly owing to wrong additions, &c.—The sales on the 1st Jan. '63, are put down as \$314.87 instead of \$204.09; there was an item of \$110.00 entered as cash sales, when it was received on account; the amount of the sales on page 563 are down in the second statement as \$254.26 instead of \$756.59; there is a difference of \$119 in the cash sales on page 177, the cash sales being entered twice on the same day; on page 738 there is a difference of \$104.40, which is owing to the wrong addition; on page 808 there is another error, from the same cause on page 1069; on page 1348 there is another mistake owing to erroneous addition;

in another which also \$342.00, following one is \$47 give credit have been for \$497. \$1,080.15 approbation amounts to article of with the of sales in statement first stated \$31,080.8 to a misc Kerr, Mac sale made from Wm Jan, 1863 dates was and gross alone; of a jobbing stock taken rience in Wm. Mol in the de of the g is one of McDonough amount credited; and then House, goods of them was stock; i

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in another place a day's sales were overlooked; in another place a credit of better is taken which should not have been taken in; a cash sale is put down as \$222.22 which is correct at \$242.00, which is a mistake in copying the figures in day book "G," page 26, there are the following errors: first, the amount of cash sales put down at \$462.12, which is the corrected one is \$472.24; the reason of this is another error in the transferring the figure, and we give credit for it afterwards; on page 481 the cash sales are down for \$560.28, which should have been \$452.24; and is owing to an error in the addition; on page 790 the cash sales down for \$497.28, should have been \$360.09, owing to an error in addition; on page 1176 there was \$1,200.15; it is now \$289.50, which is for goods taken off which were put there from the approbation book wrongly; there were accounts opened with the partners in the firm; the amounts taken by either of the partners out of the store were entered in the sales; any article of merchandise taken by them were entered in the credit sales; have nothing to do with the profits; made the calculation at 12½ per cent. on both the sales; the smaller amount of sales has the greater amount of profit in the first statement to the companies; the last statement is correct; am sure of that; made the last calculation myself; the profits on the first statement are \$35,125.50 on \$284,177.20; and in the second statement the profits are \$31,080.61 on \$217,625.64, which shows a larger profit on the smaller sum; this was owing to a miscalculation; there was a large quantity of goods purchased here from John Birrell, Kerr, Mackenzie & Co., Adam Hope, Edward Adams, and many others; they are the wholesale merchants; there are other parties from whom we have purchased; we have purchased from Wm. McDonough; the amount of merchandise purchased from John Birrell & Co., from Jan, 1843, up to the fire was \$11,846.00; from Kerr, Mackenzie & Co., between the same dates was \$2,700; this includes dry goods and groceries; from Hope & Co., \$4,867; dry goods and groceries; Adams & Co., \$10,952, groceries only; Wm. McDonough, \$3,426, groceries alone; of these all are wholesale; did not purchase any of the goods; Wm. McDonough does a jobbing trade; the goods are ticketed for a little higher rate than they are put down at stock taking; have nothing to do with the marking of the goods; know from my own experience in business that 12½ per cent. is a low rate of profit; we received a statement from Wm. McDonough, and we found we had goods taken into stock which were credited neither in the day book nor in the invoice book; we had not invoices at the time of the fire for some of the goods; got a duplicate one; the sum of \$152.15 is not entered in any other place; it is one of the Crawford invoices; cannot explain anything about it; believe Mr. John McDonough explained it in his examination yesterday; the item H. Walker, whiskey, the amount charged is \$611.00; the amount now charged \$687.93, the difference being for barrels credited; an American invoice, amounting to \$7,591.19, was charged in American currency, and there should have been a reduction of 40 per cent. discount taken off by the Custom House, also litrage and other charges, which made the net amount \$4,019.02; invoice of goods sent to Messrs. Silas & Kent on approval, but they were returned; the amount of them was \$488.04; this was included in the approbation book, and credited against the stock; it was a mistake.

[A great number of invoices were here carefully gone over, and found correct. At this stage of the case a discussion took place whether the witness, Mr. Smith, was bound to furnish statements and extracts which he (the witness) stated would occupy him about five hours, the plaintiff's counsel contending that the defendants were at liberty to have the books to inspect them and make any extracts, and ask questions regarding such extracts. Mr. J. H. Cameron contended that the plaintiffs were bound to furnish the extracts in order to put the questions and receive correct answers. His Lordship ruled that the defendants could have the book to-night, and make any extracts they wished, and ask any questions they choose concerning any errors they found there. His Lordship here stated it was not his intention to leave the case unfinished, he would remain here until this case should be finished, and wished this to be understood by all parties.]

James Smith (examination continued).—Had nothing to do with the damaged stock, nothing more than having copied the sheets; have not made up a separate statement of the goods sold in Montreal; invoice No. 105, amounting to \$1082.68, was sold in Montreal; a memorandum shows this; there was no profit and loss account in the book; no general cash book nor stock book; Mr. Beddome came with another gentleman in the shop after the risk was effected; Mr. Beddome looked around and saw the amount of stock on hand.

Edward Adams, sworn.—Am a wholesale grocer in this city; know the plaintiffs; have been in the habit of selling them goods; have been in their store frequently; they had a very large stock of dry goods and groceries; estimated their stock worth from \$50,000 to \$60,000; merchants' stock increases when they are thriving; they were considered to do a large business; teas are very much damaged with smoke; it would not surprise me if they lost \$38,000, the amount saved being \$22,000.

Cross-examined.—Was very frequently in their store; never made any particular examination; was never in any of the rooms above; formed my estimation of their amount of stock from the quantity I knew they purchased and their stock on hand; the teas are damaged with smoke, the flavor is impregnated with smoke; sold the plaintiffs considerable

quantities of goods; never sold goods to their customers with the bills against them; have known them ever since they have been in business; their stock has increased very much of late; with proper book-keeping a merchandise account should be kept; would be difficult to keep books correct without one; in wholesale business a profit and loss account should be kept; a cash book should also be kept; a cash account in the ledger is necessary to proper book-keeping; cannot say whether the stock should be high or low in September.

Re-examined.—It is very difficult to keep a merchandise account in a retail business; the invoice book shows the amount of goods received, and the cash and credit sales show how the goods were disposed of.

Hugh Rose, sworn.—Was called upon by the plaintiffs to help to take stock of the dry goods; helped to take the stock; have been a merchant in the city for over 30 years; should consider the stock damaged to the amount of 30 or 35 per cent; have had considerable experience in business; the average profits on the dry goods are 25 per cent; am accustomed to groceries; some groceries are sold for very small profit; have been in the store; consider they had a very large stock.

Cross-examined.—Have lived a few doors from them; saw some of the goods damaged by the fire; did not appraise them; most of them were badly damaged; did not handle the groceries, only the dry goods; have sometimes sold goods for cost; if I had a stock, would consider 25 per cent, a fair average profit on the goods.

Wm. J. Stewart, sworn.—Reside in Montreal; has been in the habit of selling goods to the plaintiffs; was in their store the day before the fire; went over the stock to examine and see if they had a large stock, as I sell only to wholesale merchants; think from what I saw in the two shops that there was stock to the amount of from \$40,000 to \$60,000.

Cross-examined.—Did not know there was any goods up stairs; only saw what was on the ground floor.

Daniel Welsh, sworn.—Reside in Montreal; am in the wholesale dry goods business; sold goods to the plaintiffs for about seven years; have been in their store 1 or 2 times a year; was there in July before the fire; consider the stock of dry goods and groceries worth from \$60,000 to \$70,000; believe that was their average stock.

James Skilton, sworn.—Reside in Montreal; know the plaintiffs; am in the wholesale dry goods business; have not sold them goods lately; was in their establishment on the 24th and 25th August last; my opinion was they had in the lower shop from \$40,000 to \$60,000 worth of dry goods; suppose their general stock was about \$60,000; am a little acquainted with the grocery business; we judge a man's solvency by the amount of his stock.

James Stephenson, sworn.—Reside in Montreal; has lived in this city; travels for W. Stephens, wholesale dry goods merchant; have been in the business 20 years; have sold the plaintiffs goods; was in their store in August last; my opinion was—though it was difficult to say accurately—that the amount of their stock was worth about \$60,000 or \$70,000; think that has been their average stock for the past three years.

Andrew Jack, sworn.—Reside in Montreal; am in the boot and shoe business; am in the employment of Ames, Meland & Co.; was in the establishment of the plaintiffs in August before the fire; was there in the spring; thought they had a very large stock, about \$40,000; never saw any difference when I was there.

John Gillespie, sworn.—Reside in Hamilton; am in the commission business; have been frequently in the plaintiff's store; have not been through all the premises; thinks \$40,000 was a low estimate for the goods exposed for retail.

George Hall, sworn.—Am a carpenter; live in this city; know the plaintiffs; have done some work for them; have been in their store frequently; saw what they had after the fire; the stock saved bore a marked deficiency to the stock in the store before the fire; saw the goods put on shelves; don't think there was a third saved, at least not of the dry goods; was at the fire; saw the goods burning; saw parties making efforts to save the goods; there was not time to get a third of the goods; there was over 184 feet of shelving to hold the dry goods stock before the fire, and after the fire the goods were contained on 47 feet of shelving; the shelves were filled up in both cases.

Wm. J. Elworthy, sworn.—Reside in Montreal; am a commercial traveller; am connected with a dry goods establishment; have been in the plaintiff's store frequently; was there on the 7th June; the last time I think there was about \$45,000 to \$50,000 worth of dry goods and groceries on the ground floor; did not see the stock up stairs; judge a little of the quantity of goods kept in the drawers by the style of the trade done; one could not see the whole of the goods, as a considerable portion would be in drawers and under counters, not exposed to view.

Henry Long, sworn.—Have been in business here in both dry goods and groceries; have been in the plaintiff's store; was in their store the second or third evening previous to the fire; am satisfied they had \$60,000 worth of stock; was frequently through the establishment; judge from their sales they must have had a stock of about \$60,000.

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Edwin Bortwick, sworn.—Know the plaintiffs; was in their store the day before the fire; their stock seemed to me to be very large; made a remark to Mr. Smith, the book-keeper, about their large stock.

Robert Boyd, sworn.—Reside in this city; am a tailor; know the plaintiffs; have done considerable work for them; was at the fire shortly after the doors were opened; saw large quantities of goods being consumed; have been frequently in their store for the last two years; saw the goods which were saved; bought cloth from them, and had opportunities of examining their stock; there was a great difference between the quantity saved and that in the store before the fire; should think there was not more than a third saved; the goods saved were in the brick building on North-street.

John Young, sworn.—Reside in Montreal; am a traveller for a dry goods house there; am connected with the house, and do not travel on commission; know the plaintiffs; have been in their establishment frequently; was there in August before the fire; sold them goods; their stock seemed very well kept up; the value of their stock of dry goods was, in my opinion, from \$30,000 to \$35,000.

This was the case for the plaintiffs.

The Court, at the request of Mr. John H. Cameron, adjourned for an hour, to allow the defendants to arrange their defence.

After the adjournment, Mr. John H. Cameron, Q.C., opened the case for the defendants, stating that according to the new rules he should reserve his address on the whole facts of the case until the conclusion of the defendants case; and he would merely give an outline of the line of defence to be offered by them. The learned counsel stated that as yet no witness had given the amount of stock in the store before the fire at near the amount given by the plaintiffs in their statement to the Insurance Companies. The difference of \$24,000 between the first and second statement was, he was sure, sufficient to make the agents of the Insurance Companies demand an investigation; and on the third statement they were convinced that there were still further errors. It was no wonder that an investigation had taken place when the amount of errors between the first and third statement was equal to the total amount of the Insurance policies. With these facts before them, he could safely say that the Insurance Companies were not actuated by a malicious feeling when they demanded an investigation of this claim; but it was solely to arrive at a true statement of the immense business done by the plaintiffs. Moreover, he repudiated the insinuation thrown out by his learned friend, the counsel for the plaintiffs, that he had endeavored to retard the progress of this suit. The learned gentlemen then put in three different applications to different companies—1st, to the Royal; 2nd, to the Commercial Union; and 3rd, to the Provincial Insurance Co. They were all applications for a one-year policy. In the application to the Royal, the property is put at the value of \$65,000; that to the Commercial Union at \$75,000, and the average stock at \$75,000; and to the Provincial, the present value, at \$70,000, and the average amount of stock at \$65,000.

FOR THE DEFENCE.

James Davison, sworn.—Am manager of the Phoenix Co.; reside in Montreal; the Phoenix is one of the companies in which the plaintiffs are insured; received notice of their loss by fire shortly after the 3rd of Sept.; arrived in this city shortly afterwards; came here before I received the first statement; it was not a satisfactory statement: we demanded a further statement, when we found that their invoices were entered in some cases three times; received the second statement on the 14th of October, in which there is a reduction of over \$24,000; did not find this statement satisfactory; all the companies were represented; Mr. Ball from the Liverpool and London; Mr. Blight for the Provincial Co.; Mr. Davidson for the Royal; and Mr. Cole for the Commercial Union; and myself for the Phoenix; and Mr. Switzer for the Lancashire and London; sent the plaintiffs a letter dated the 14th of October, signed by the several representatives, to furnish us with a statement of all transactions; the plaintiffs complied with the request stated in the letter, and we immediately began to investigate the books; never saw the book containing the aggregate sales; asked the plaintiffs for their cash book, and they stated that they had none; the plaintiffs were occasionally there; Mr. Smith was sent there on their behalf; we went through invoice list No. 1 item one by one; found a large number of errors in the invoices furnished to the different Cos.; the invoice books were produced, and we then proceeded to examine the claim; before I commenced I discovered a large number of invoices which had been charged twice; in the second statement these errors which I found still remained; Mr. Smith was very much surprised that such errors should have occurred; the greater number of errors was in invoices being charged twice and in some instances three times; thought then these could not be original invoices; found a large number of American and English invoices were without the Custom House mark upon them; never saw such a confusion in the entries; saw a large number of these American and English invoices; there were thirteen unstamped; when all invoices pass through the Custom House they are

stamped, to show that the duties have been paid; the aggregate of invoices without the Custom House mark is about \$7,000; we discovered a number of items charged on the invoice list as well as in the produce list; the result of our examination of the errors of this description amounted \$12,429; a large number of these errors are corrected in third statement; found stock taken at selling prices; Mr. Kent told me so, and their statement showed it also; was not satisfied with the manner in which the profits are deducted to bring the stock down to the cost price; the rates of profit were different, one for dry goods and another for groceries; when the rates were rightly applied they made a difference of about \$3,000; in my experience never knew the selling prices of goods to be marked so low as 15 per cent for dry goods, and 12½ for groceries; we put 20 per cent on them; the difference made was \$4,533.30; in the approbation book we met with invoices of goods with 5 per cent on, and some with nothing on; thought this would materially alter the rate of profit; in the corrected list they give us credit for goods returned, in one instance they gave us credit for 15 per cent, and in another of 5 per cent; the amount of goods sold at cost, and at 5 per cent and thereabouts, was over \$26,000; considering the amount taken off the sales was too high; think 10 per cent would have been a fair rate to allow; charging 10 per cent instead of 15 per cent would have made the difference of \$13,587.13; made the plaintiffs' claim for loss upwards of \$26,794.16 less than they made it.

Cross-examined.—It is not usual to reduce profits by 20 per cent; there is no regular rule; the amount of profit usually allowed is 12½ per cent in a retail store; am in Gillespie & Moffatt's establishment; am not their book keeper.

Frederick J. Bell, sworn.—Represent the Liverpool & London Insurance Co.; was present on the occasion to which Mr. Davidson has alluded; have heard the statements; agree with him; we made them conjointly.

Cross-examined.—Have had nothing to do with mercantile business; have adjusted claims for losses; as far as my experience goes there is no regular rule to govern profits to be allowed; require evidence of profits at the settlement; the highest we have allowed in a retail establishment is 20 per cent. off the sales; there have been one or two cases higher; the lowest which we allowed is hard to say; these profits are the gross profits, not the net profits.

William Blight, sworn.—Am the Inspector of the Provincial Company; was here with the other agents; heard the testimony of Mr. Davidson; corroborates his evidence.

Cross-examined.—We have not regular rules to allow profits; profits range from between 2½ and 20 per cent; the wholesale dealers are sometimes allowed only 2½ per cent; in an establishment like the plaintiffs, they would range from 5 to 20 per cent; in a country store the profits might be allowed at 20 per cent on the sales; the profits being deducted at 13½ per cent, was very favorable to the insurance companies.

Frederick Cole, sworn.—Am Inspector for the Commercial Union; was here on the second occasion in October with the agents of the other companies; have heard Mr. Davidson's testimony; agree fully with him in his statement; do not know whether the settlement of sterling at 60 per cent includes freight.

James Davison, recalled.—The duties are included in the 60 per cent. allowed on sterling invoices; did not furnish the plaintiffs with a list of my objections.

Cross-examined.—Mr. Smith was always present; when we found anything very complicated, we told Mr. Smith that his services were not required.

Alexander Davidson, sworn.—Am the Inspector of the Royal; came here after the fire to investigate the plaintiffs' claim; came here again in October; did not unite with the other companies in the investigation; know nothing about it; made a proposal to arrange the claim; offered a compromise when we found the books in such a state; the amount offered was a compromise of \$5,200; the basis was that they had lost \$22,000; Mr. Kent said it was all right, but he wished to consult his attorney; after he had consulted, he said that if it could be managed in any way so that it would not appear to the other companies, he would accept the compromise.

Cross-examined.—Our company refused to extend the time for sending in their claim; to give a correct statement would occupy a long time; don't think it was to be settled in full; know Mr. Welsh of Montreal; never told him that we would have settled only for the Phoenix; am quite sure that I never said we would settle in full; don't recollect speaking to Mr. Welsh anything about it; the income from premiums in 1864 was over £300,000 sterling.

Court adjourned for an hour for dinner at quarter past one o'clock. After the adjournment, the defendant's Counsel called:

Alexander S. Abbot, sworn.—Am city Clerk; McDonough and Kent are assessed for personal property \$30,000; yearly value \$1,200.

Cross-examined.—A notice of appeal was sent into the Court of Revision; the plaintiffs did not speak to me about it; the plaintiffs would not make a declaration that their stock was lower than \$20,000; Thomas McDonough appeared and showed that other merchants

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were assessed lower than they; the assessment on their real estate was reduced, but not on their personal property, except they made a declaration to the effect that their personal property was of less value than \$20,000.

This finished the case for the defendants.

Mr. John H. Cameron, Q.C., then addressed the jury on behalf of the defendants, contending that the insurance of the plaintiffs was increased two-thirds, which, taken in connection with the other circumstances of the case brought out in the evidence, was a very suspicious point. There would not have been the slightest trouble in making up their books in the 14 days allowed by the insurance companies if they had been kept in a business like manner. It had been proved as a fact that the plaintiffs had no stock account, no general cash book, nor even a merchandise account. If they had kept these accounts, instead of their taking up 14 days, it would not have taken them 48 hours to make up their claim. The learned gentleman continued his address by contending that the jury were not to take notice of the third statement; it was voluntarily, not demanded or asked for by the defendants. They were to take notice of the second statement, and if they found errors in it they were to judge of them strictly. Everything that is in the third statement must be left as it was, because we had found out the errors; it never would have been made out except the defendants had discovered those errors. In regard to the English invoices, which had come in without paying duty, they contend that they were entered in the invoice book with 60 per cent. added, which was clearly a fraud, as no duty was paid at all, and such invoices should have been excluded. The fact of their having sent in their third statement, the errors which the insurance companies, agents found out being corrected in this statement, coupled with the fact of Mr. Kent having offered to settle on the basis of their loss at \$22,000, must convince the jury that the basis of loss at \$22,000 was the correct one. The amount of goods purchased by the plaintiffs in London should clearly not be charged against us with a profit of 20 per cent., as they were bought for customers who themselves could have gone and purchased them for the same price from the same parties.

The learned counsel wound up his able and forcible speech by a strong appeal on behalf of his clients, taking up about one hour in its delivery.

Mr. M. O. Cameron, Q.C., then replied on behalf of the plaintiffs, stating that when a person's claim is just there is no need of being lengthy, and as his learned friend was brief he also would not trouble them with a long speech. The plea made by the defendants against the recovery of the amount of the policy charges the plaintiffs with making a fraudulent statement, but he asked them to look for a moment at the affidavit; it was not that they believed they had lost \$81,000, for they thought that amount was too much, but that there were errors owing to the hurry in which they had to get their claim made out. Still they were satisfied they had lost over \$38,000. The learned counsel then referred the jury to the stock book in which the stock was entered in January, 1863, long before the insurance was effected. Then the stock amounted to \$67,000, profits being included, and profits deducted it amounted to something like \$58,000. In regard to the invoices on which there are no custom house marks, could there not have been, he asked, duplicate invoices, and might not one of these have been mislaid and the unstamped one pasted in? The plaintiffs have been so particular that they have brought down the amount of their stock to \$46,000, of which every article can be proved, and which is still nearly \$10,000 over and above the aggregate amount of the insurance policies. His learned friend had put the compromise of \$22,000, as though it was the offer of Mr. Kent, whilst the evidence of Mr. Davidson in such a state of confusion that it would be impossible to tell the amount of their loss at all. The defendants (the learned counsel continued) had the witness John McDonough in the witness box for nearly nine hours, yet they did not discompose him, and he answered the questions and satisfied them in every respect. The defendants did not make out a list of the errors which they found, but when they found anything with which they were not satisfied, they told Mr. Smith, the bookkeeper, that he might leave the room, instead of examining him. The learned counsel concluded a reply of much force by showing that no doubt the defendants thought that if the plaintiffs were kept without the money for some time, they would be forced into a compromise, and be compelled to accept the \$22,000 offered by the insurance companies, which would be a clear saving of \$18,000 to them.

His Lordship then charged the jury, stating in the first place the nature of the defence on the record. Continuing his remarks, he said the affidavit with the first statement given to the Insurance Companies stated that they did not think their loss was \$81,000, but still they felt sure that it was over the amount of the aggregate of the policies. The defendants contend that the second statement is binding, as the plaintiffs had sufficient time to prepare a correct one. However false the statements were, still if the plaintiffs did not know they were untrue, they were not guilty of fraud, but if they put them forth as true, knowing at the same time they were untrue, they were guilty of fraud. If Mr. Kent really knew that the duties were unpaid on the English invoices, and he put them in the statement furnished

to the Insurance Companies as paid, that was a fraud, but where is the proof? The instructions to Mr. Irving by Mr. Kent were not to put in any of those. Again, is it not business-like to have duplicate invoices, and cannot by mistake the unstamped get in? Is there evidence that he smuggled? for this is really what is attempted to be alleged. You may infer it from the fact that the invoices were unstamped. If he knew the statements were false and put them forth as true, he was guilty of fraud within the meaning of the clauses in the policy. We may infer that their business began on a small scale, for we do not find that there was any merchandise account; but this would not be of any consequence if they were satisfied that the invoices have been entered correctly, and if all the cash and credit sales are entered, for by taking one from another we can arrive at the amount of their loss. Again, if there was an even barter, if they gain on the produce, it was a gain to the Insurance Co., but if the produce was sold at a loss it was a loss to the Companies. If all the produce shown here was sold at a loss, the defendants would have reason to complain. The plaintiffs are charged with entering invoices twice, but they show they often received duplicate invoices, which might lead to the mistake by a greater quantity of stock being represented than was really on hand, and consequently, was against the Insurance Companies. There was no approbation book until 1864; the plaintiffs had begun to job, and as it often happens, they sent out goods which they could not sell in their store, to endeavor to sell them to their customers, which book was kept by Mr. Kent; these goods in the approbation book were not entered in the book of the firm; this was an irregularity, but it was not a fraud except they meant to defraud the companies. It was on these grounds of irregularity that the defendants complain that they are not satisfied with the statements. Concerning the increase of the insurance, which the defendants say is another ground of fraud, and that the statements in the several applications were irreconcilable, and showed no knowledge of the plaintiff's business, this, the defendants contend, is another circumstance to show fraud. The defendants knew of all the policies having been taken. The plaintiffs put down their loss at \$46,000, whilst the defendants claimed that the plaintiffs have only lost about \$32,000. The plaintiffs have brought forward Mr. Smith, Mr. McDonough and a number of accountants, to show the state of the books; witnesses were also called to prove the amount of stock on hand at the time of the fire. They proved the amount of the stock up to the time of the fire. Some of them have had considerable experience in valuing stocks; they speak of the amount of stock at from \$35,000 to \$70,000, the lowest statement for the dry goods only, as the groceries were hard to estimate. If the statements were false the jury would find for the defendants; if they are correct and have been proven so, they must give their verdict for the amount which they considered was the stock lost. If they really thought that the defence of the Insurance was right, and was in the interest of the public, they need not give interest, for interest was given on the nature of the damages.

The Jury retired at half-past four o'clock, and returned in about an hour. The verdict was for the plaintiffs, for the full amount of the policy, \$9,000, and the interest, making in all \$9,315.10.

The verdict was received with applause by many in the court, but was immediately suppressed by the Judge and officers of the court.

The following is the correct amount of the various policies on the stock of dry goods and groceries of the plaintiffs covered by insurance, for which actions were brought. The only case taken up was that of the "Royal" Insurance Co. :—

Royal Insurance Company.....	\$9,000
Commercial Union do.....	6,000
Phoenix do.....	8,000
Liverpool and London do.....	8,000
London and Lancashire do.....	4,000
Provincial do.....	3,000
	\$38,000

CONCLUDING REMARKS.

STATEMENT OF LOSS FOR THE TWENTY MONTHS.

Dr.	Cr.
1863.	1864.
Jan. 1, To Stock on hand.....\$ 58223 33	Sep. 3, By Stock saved from fire...\$ 17683 42
" received since by	By Sales since Jan. 1, '63. 221307 75
the various clerks employed	
by the firm.....227139 34	By balance.....48476 19
	1285447 30
1864.	
Sep. 3, To balance on hand at fire.\$ 40476 19	
By protected against fire	
by policies.....28000 00	
To bal. lost, no insurance \$8476 19	

The correctness of the foregoing accounts was proved to at last assizes by

JAMES SMITH, Book-keeper, London.
JOHN E. McDONOUGH, Clerk, London.
JOHN W. WEIR, Clerk, London.
EDWARD E. CULLETT, City Auditor, London.
ALFRED LAING, Accountant, London.
W. F. FINDLEY, Accountant, Hamilton.

The whole proceedings will show that the insured tried in every way to render an honest claim, and that their loss was \$40,000; some \$8,000 more than covered by insurance. When we consider the offers of settlement made by the Companies 1st, \$10,000; 2nd, \$12,000; 3rd, \$15,000; 4th, \$22,000; during the trial, \$30,000; after the verdict, the full amount, less costs, the result is, the trial and the unanimous verdict rendered by the following gentlemen of the jury:—

WM. B. KAIN, Merchant.
EDWARD ROGERS, Plumber and Gas Fitter, City.
JOHN WHYKOFF, Builder.
FRED. ANDERSON, Insurance Agent, Westminster.
HENRY BELTZ, Builder, City.
ROBERT SCOTT, Builder.
ALEX. BALL, Farmer.
DAVID LOCKWOOD, Farmer.
ALEX. CAMPBELL, Farmer.
G. LEON BAKER, Farmer.
WM. McQUEEN, Farmer.
EDWARD SCHRAM, Farmer.

Which proves—

- 1.—That McDonough and Kent's loss was \$40,000.
- 2.—That they did not act fraudulently, nor were their accounts false or fraudulent.
- 3.—That the Companies must pay the loss in full, with interest.
- 4.—That unwilling debtors, be they individuals or corporations, may be forced to pay their debts.
- 5.—That in transacting business to do it on the principle of fair play and in a spirit of honesty.
- 6.—That when an individual or a Board think they understand, but do not, they may be brought to feel that what a competent person is in attendance, he should be consulted, and not misled by excluding.
- 7.—That they individually, or on a Board, may be enabled to see that whenever they can accommodate or oblige their customers without doing themselves harm, or being in any way inconvenient, better so; so far as extending time to enable their customers to render a correct account.
- 8.—That they individually, may be brought to understand that those preconceived and hasty conclusions, and abrupt expressions in saying "that's lumpy and that lumped," are not to be compared in respect to correctness with written records.
- 9.—That they may be brought to view it aright, and whenever Companies undertake to stain and blacken the character of individuals or firms, that they should first ascertain if they could sustain their plea.

